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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. CHAD RICHARD WILBURN, Defendant and Appellant.	E065752 (Super.Ct.No. SWF020738) OPINION

APPEAL from the Superior Court of Riverside County. Becky Dugan, Judge. Affirmed.

Jill M. Klein, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Theodore M. Cropley and Kimberley A. Donohue, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

On April 30, 2008, defendant and appellant Chad Richard Wilburn pled guilty to felony possession of methamphetamine while armed with a loaded, operable firearm (Health & Saf. Code, § 11370.1). Additionally, he admitted that he committed the offense while released from custody on bail (Pen. Code, § 12022.1)[1] and that he suffered four prior prison terms (§ 667.5, subd. (b)). In return, the remaining charges were dismissed and defendant was sentenced to the upper term of four years for the substantive offense, plus a consecutive term of two years for the on-bail enhancement, plus consecutive one-year terms for each of the four prior prison terms pursuant to section 667.5, subdivision (b).

After the enactment of Proposition 47 in November 2014, which reduced certain felonies to misdemeanors, defendant successfully applied to have two of his four felony convictions redesignated as misdemeanors. On January 25, 2016, defendant filed in this case a petition for resentencing pursuant to section 1170.18, asserting that the two felony convictions now redesignated as misdemeanors pursuant to Proposition 47 could no longer serve as "felony" convictions to support the one-year sentence enhancements required by section 667.5, subdivision (b). In short, defendant sought to reduce his aggregate sentence by two years. The trial court denied defendant's petition. This appeal followed.

[1] All future statutory references are to the Penal Code unless otherwise stated.

On appeal, defendant contends: (1) the two prior prison terms must be stricken and his sentence reduced by two years because, under the rules of statutory construction of Proposition 47, the two prior prison terms are now misdemeanors "for all purposes"; (2) Proposition 47 should be applied retroactively because it mitigates punishment; and (3) failure to strike his two prior prison terms violates his state and federal constitutional right to equal protection.

We conclude that Proposition 47 does not apply retroactively to previously imposed section 667.5, subdivision (b) sentence enhancements once a judgment of conviction attains finality. Nothing in the plain language of Proposition 47 states that it applies retroactively; there is no evidence that voters intended such a retroactive effect; and, there is a statutory presumption that amendments to the Penal Code operate prospectively. Furthermore, we conclude that failing to strike defendant's prior prison terms does not violate his equal protection rights. Accordingly, we affirm the trial court's ruling.

II

FACTUAL AND PROCEDURAL BACKGROUND

On February 6, 2008, the People filed an information charging defendant with possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a); count 1); possession of a hypodermic needle and syringe (Bus. & Prof. Code, § 4140; count 2); and possession of methamphetamine while armed with a loaded, operable firearm (Health & Saf. Code, § 11370.1; count 3). The information also alleged that in the commission of

count 3, defendant participated as a principal knowing another principal was armed with a firearm (Pen. Code, § 12022, subd. (a)(1)) and that defendant was released on bail in another case (§ 12022.1) when he committed count 3.

On April 30, 2008, the People orally amended the information to include the four following prior prison term enhancement allegations: (1) a 1997 unlawful taking or driving a vehicle (Veh. Code, § 10851, subd. (a)); (2) a 1998 petty theft with a prior (§ 666); (3) a 1999 possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)); and (4) a 2001 unlawful taking or driving a vehicle with a prior vehicle theft conviction (Pen. Code, § 666.5).

Defendant thereafter pled guilty to possession of methamphetamine while armed with a loaded, operable firearm as alleged in count 3. He also admitted that he was released on bail in another matter when he committed count 3 and that he had suffered four prior prison terms. In return, the remaining allegations were dismissed and defendant was sentenced to a total term of 10 years in state prison: the upper term of four years for the substantive offense, plus a consecutive term of two years for the on-bail enhancement, plus consecutive one-year terms for each of the four prior prison terms pursuant to section 667.5, subdivision (b).

Long after the judgment in this case had become final, on November 4, 2014, California voters approved Proposition 47, the Safe Neighborhoods and Schools Act, enacting section 1170.18. The statutory amendments set forth in Proposition 47 became effective the next day.

Pursuant to Proposition 47, defendant filed section 1170.18 petitions to have two of his prior felony convictions redesignated as misdemeanors. The trial courts in those two cases granted defendant's petitions. On August 24, 2015, the Riverside Superior Court, in case No. RIF082060, redesignated defendant's 1998 felony conviction for petty theft with a prior as a misdemeanor. On October 30, 2015, the San Bernardino County Superior Court, in case No. FSB024708, redesignated defendant's 1999 felony convictions for receiving stolen property and possession of a controlled substance as misdemeanors.

On January 25, 2016, in this case (case No. SWF020738), while incarcerated in state prison, defendant filed a petition to recall his sentence and to be resentenced. He asserted that two of the felony convictions supporting the one-year prior prison term sentence enhancements had been redesignated as misdemeanors pursuant to Proposition 47, and that those convictions could no longer serve as felony convictions under section 667.5, subdivision (b). Defendant's petition therefore sought to have his sentence reduced by two years.[2]

On February 2, 2016, the People filed a response, indicating defendant was not entitled to the requested relief because Health and Safety Code section 11370.1, possession of methamphetamine while armed with a firearm, was not a qualifying felony.

[2] Defendant utilized a form petition provided by the Riverside Superior Court and checked the box "Other." He wrote in "PC 667.5(b) for PC 666" and "PC 667.5(b) for . . . H&S 11377([a])." Defendant attached to the form petition a handwritten "Statement of Facts" wherein he indicated his two prior felony convictions had been redesignated as misdemeanors.

On March 10, 2016, the trial court summarily denied defendant's petition, finding Health and Safety Code section 11370.1 "is not a qualifying felony." Defendant timely appealed.

III

DISCUSSION

A. *Statutory and Case Law Background*

In 1976, the Legislature enacted section 667.5, subdivision (b), which provides that for any person convicted of a felony, "in addition and consecutive to any other sentence therefor, the court shall impose a one-year term for each prior separate prison term or county jail term . . . for any felony."

In 2014, California voters enacted Proposition 47, which reclassified certain drug and theft-related felony offenses as misdemeanors. For persons already convicted of one of these offenses, Proposition 47 provided relief to those persons by creating two new procedures pursuant to a new section 1170.18 added to the Penal Code.

First, if the person is currently serving the felony sentence, then he or she may petition for a "recall" of that felony sentence and request resentencing to a misdemeanor unless the court finds that resentencing would pose an unreasonable risk that the person will commit a new violent felony. (§ 1170.18, subds. (a)-(c).) Second, if the person has completed the sentence for the felony conviction, he or she may file an application to have the felony conviction "[re]designated" as a misdemeanor. (§ 1170.8, subds. (f)-(g).)

After an individual obtains relief under these two provisions, the statute provides that any felony conviction recalled pursuant to subdivision (b) or redesignated pursuant to subdivision (g) "shall be considered a misdemeanor for all purposes, except that such resentencing shall not permit that person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6." (§ 1170.18, subd. (k).)

The purpose of Proposition 47 is to "ensure that prison spending is focused on violent and serious offenses," "maximize alternatives for nonserious, nonviolent crime," and "invest the savings generated from this act into prevention and support programs in K-12 schools, victim services, and mental health and drug treatment." (Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop. 47, § 2, p. 70 (hereafter Voter Information Guide).)

After the enactment of Proposition 47, prisoners began filing section 1170.18 petitions attacking previously imposed section 667.5, subdivision (b) sentence enhancements based on felony convictions now redesignated as misdemeanors under Proposition 47. The issue before us is whether a prior prison term enhancement must be stricken if, after the judgment has become final, the prior conviction upon which the enhancement was based is reduced from a felony to a misdemeanor. Cases involving similar issues are pending before our Supreme Court. On February 3, 2016, Division One of this court issued *People v. Valenzuela* (2016) 244 Cal.App.4th 692, review was granted March 30, 2016, S232900; on February 10, 2016, the Fifth District issued *People*

v. Ruff (2016) 244 Cal.App.4th 935, review was granted May 11, 2016, S233201; on February 11, 2016, Division One of this court issued *People v. Carrea* (2016) 244 Cal.App.4th 966, review was granted April 27, 2016, S233011; on March 3, 2016, Division Two of the Second District issued *People v. Williams* (2016) 245 Cal.App.4th 458, review was granted May 11, 2016, S233539; on July 7, 2016, this court issued *People v. Jones* (2016) 1 Cal.App.5th 221, review was granted September 14, 2016, S235901; and on December 15, 2016, this court issued *People v. Evans* (2016) 6 Cal.App.5th 894, review was granted February 22, 2017, S239635. Recently on February 15, 2017, Division Four of the Second District issued *People v. Diaz* (2017) 8 Cal.App.5th. 812. All the foregoing appellate opinions concluded that Proposition 47 has no retroactive effect on previously imposed section 667.5, subdivision (b) sentence enhancements that are subsequently reduced from felonies to misdemeanors pursuant to section 1170.18.[3] As this court and other appellate courts previously considered and rejected the same argument, we likewise conclude Proposition 47 does not apply retroactively to invalidate defendant's enhancements once a judgment of conviction attains finality.[4]

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[3] We note *People v. Isaia* (Sept. 23, 2016, G051739) nonpublished opinion, review granted November 11, 2016, S237778, reached a different conclusion.

[4] Although the California Supreme Court granted review in the previously published cases agreeing that Proposition 47 does not apply retroactively to previously imposed section 667.5, subdivision (b) sentence enhancements, we cannot divine how the Supreme Court may decide the issue; at this point, we find persuasive the reasoning proffered by the other appellate courts.

B. *Standard of Review*

The interpretation of a statute is subject to de novo review on appeal. (*Kavanaugh v. West Sonoma County Union High School Dist*. (2003) 29 Cal.4th 911, 916.) The principles for interpreting a proposition enacted by popular vote are the same as those used to interpret a statute enacted by our Legislature. (*People v. Park* (2013) 56 Cal.4th 782, 796 (*Park*); *People v. Rizo* (2000) 22 Cal.4th 681, 685.) " 'The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. [Citations.]' " (*Horwich v. Superior Court* (1999) 21 Cal.4th 272, 276; accord, *People v. Jones* (1993) 5 Cal.4th 1142, 1146.) "In determining intent, we look first to the words themselves. [Citations.] When the language is clear and unambiguous, there is no need for construction. [Citations.] When the language is susceptible of more than one reasonable interpretation, however, we look to a variety of extrinsic aids, including the ostensible objectives to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part. [Citations.]" (*People v. Woodhead* (1987) 43 Cal.3d 1002, 1007-1008; accord, *Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 901.) This appeal also requires us to decide whether the principles of equal protection require striking defendant's prior prison term sentencing enhancement, a question we review de novo. (*Raef v. Appellate Division of Superior Court* (2015) 240 Cal.App.4th 1112, 1120.)

C. *Striking Sentence Enhancements*

Defendant contends the trial court erred in denying his request for resentencing as to his two prior prison term enhancements (§ 667.5, subd. (b)). Defendant argues the trial court must strike his prior prison terms because, under the principles of statutory construction, the felony convictions underlying them were reduced to misdemeanors "for all purposes." Because it is undisputed that section 667.5, subdivision (b), only imposes a one-year sentence enhancement for a "felony," not a misdemeanor, defendant asserts that section 1170.18 unambiguously prohibits courts from using a redesignated misdemeanor to trigger application of a section 667.5, subdivision (b) sentence enhancement.

Defendant also analogizes the statute at issue to the 1975 amendment of Health and Safety Code section 11357, which reduced the crime of possession of marijuana from a felony to a misdemeanor. According to *People v. Flores* (1979) 92 Cal.App.3d 461 (*Flores*), that new misdemeanor cannot form the basis of a sentence enhancement under section 667.5, subdivision (b). Similarly, defendant relies on *Alejandro N. v. Superior Court* (2015) 238 Cal.App.4th 1209 (*Alejandro N.*) where our colleagues in Division One held a juvenile offender was entitled to have his DNA profile expunged from a data bank after the juvenile's underlying felony offense was redesignated a misdemeanor. Defendant also relies on an analogy to section 17, subdivision (b), which provides that once a court reduces a wobbler to a misdemeanor, that offense is a misdemeanor "for all purposes." As stated in *Park, supra*, 56 Cal.4th 782, that new misdemeanor cannot form

the basis of a section 667, subdivision (a) sentence enhancement. Defendant argues that permitting his two felony convictions redesignated as misdemeanors to continue to support section 667.5, subdivision (b) sentence enhancements is inconsistent with those court opinions.

For the following reasons, none of defendant's arguments are persuasive. First, there is no evidence that the voters, in enacting Proposition 47, intended section 1170.18 to affect section 667.5, subdivision (b) sentence enhancements where the judgment had become final. The text of section 1170.18 creates no mechanism for obtaining a resentencing on a felony not affected by Proposition 47 merely because Proposition 47 affected an offense underlying one of its sentence enhancements. Rather, the statute provides only two specific procedures for persons already sentenced on the applicable felonies to obtain relief: the "recall" procedure in subdivisions (a)-(b) for persons currently serving the felony sentence and the "redesignation" procedure in subdivisions (f)-(g) for persons who completed the felony sentence. Neither of the two procedures apply here where the judgment had long become final. Defendant's new proposed procedure would contravene these express and implied limitations as well as the general rule that "[o]rdinarily we are not free to add text to the language selected by the Legislature" or by the voters. (See *Hampton v. County of San Diego* (2015) 62 Cal.4th 340, 350.)

Next, there is no evidence that the "for all purposes" language recited in section 1170.18, subdivision (k), applies retroactively where the judgment has become

final. While the statute prohibits the imposition of future sentence enhancements based on felony convictions redesignated as misdemeanors, it does not retroactively change the status of an offense designated a felony where the conviction and sentence are subject to final judgment. There is a statutory presumption that amendments to the Penal Code operate prospectively. Section 3 of the Penal Code provides, "No part of it is retroactive, unless expressly so declared." Nothing in section 1170.18 expressly declares that it applies retroactively to section 667.5, subdivision (b) sentence enhancements. Nor does defendant provide any evidence of voter intent that section 1170.18 would apply retroactively. Even if there were ambiguity in the statute with respect to retroactivity, we would construe the statute as unambiguously prospective. (*People v. Brown* (2012) 54 Cal.4th 314, 320, 324 (*Brown*).) As this court previously concluded in *People v. Jones*, *supra*, 1 Cal.App.5th 221, "the direction of section 1170.18, subdivision (k) that any redesignated conviction 'shall be considered a misdemeanor for all purposes,' applies, at most, *prospectively* to preclude future or non-final sentence enhancements based on felony convictions redesignated as misdemeanors under Proposition 47." (*Id*. at p. 230; italics added.)[5] Defendant's interpretation of subdivision (k) of section 1170.18 was also rejected by this court in *People v. Evans, supra,* 6 Cal.App.5th 894. We adhere to our

[5] Under a recent amendment to California Rules of Court, rule 8.1115, we may rely on *People v. Jones*, *supra*, 1 Cal.App.5th 221 (review granted Sept. 14, 2016) and *People v. Evans*, *supra*, 6 Cal.App.5th 894 (review granted Feb. 22, 2017) as persuasive authority while review is pending. (Cal. Rules of Court, rule 8.1115(e)(1), eff. July 1, 2016.)

holding in *Evans* that once a judgment of conviction attains finality,[6] the subsequent reduction of a prior conviction from a felony to a misdemeanor will not invalidate a sentencing enhancement. (*Id*. at p. 901, citing *People v. Abdallah* (2016) 246 Cal.App.4th 736, 746 (*Abdallah*); see *People v. Rivera* (2015) 233 Cal.App.4th 1085, 1100 (*Rivera*).) Defendant has provided no persuasive reason to depart from our holdings in *Jones and Evans.*

Defendant's reliance on *Flores*, *supra*, 92 Cal.App.3d 461 and *Park*, *supra*, 56 Cal.4th 782 is incorrect.[7] Those decisions are distinguishable from the present matter, because in both cases, the trial court reduced the prior conviction to a misdemeanor before the defendant's current sentencing, which included a sentence enhancement based on the newly classified misdemeanor. (See *Abdallah*, *supra*, 246 Cal.App.4th at p. 747 [section 667.5, subdivision (b) enhancement did not apply to defendant sentenced after his prior felony conviction had been designated as a misdemeanor under Proposition 47].) In this case, after defendant's sentencing that included the two sentence enhancements at

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[6] A judgment is final when the time for filing an appeal and petition for certiorari to the United States Supreme Court have expired. (*People v. Evans*, *supra*, 6 Cal.App.5th at p. 903.) In this case, defendant pleaded guilty to the substantive charge and admitted the prior prison term enhancements and was sentenced in April 2008. Approximately seven and a half years later, in August and October 2015, two of his prior prison term enhancements were reduced to misdemeanors pursuant to Proposition 47. And, approximately eight years later in January 2016, defendant filed his Proposition 47 petition in the instant case. Assuming defendant filed appeals in this case from his April 2008 plea, the judgment has since become final.

[7] We note defendant heavily relies on *Flores*, *supra*, 92 Cal.App.3d 461, *Park*, *supra*, 56 Cal.4th 782, and *Alejandro N.*, *supra*, 238 Cal.App.4th 1209 to support his position.

issue, other trial courts redesignated those felonies as misdemeanors. At the time of defendant's sentencing on the charged offenses, his two enhancements were predicated on felonies that were not reduced to misdemeanors until after the judgment had long become final. In fact, the Supreme Court in *Park* noted that the "for all purposes" language used in section 17, subdivision (b), does not have retroactive effect on a previously imposed sentence enhancement: "[t]here is no dispute that, under the rule in those cases, defendant would be subject to the section 667(a) enhancement had he committed and been convicted of the present crimes *before the court reduced the earlier offense to a misdemeanor*." (*Park, supra,* 56 Cal.4th at p. 802, italics added.) Therefore, those cases provide no support for defendant's proposed interpretation of section 1170.18.

Defendant's reliance on *Alejandro N., supra,* 238 Cal.App.4th 1209 to support his position that the voters intended to extend the benefits of Proposition 47 retroactively to his current sentence is also misplaced. In *Alejandro N.*, the trial court reduced a minor's maximum term of confinement after resdesignating his commercial burglary conviction to shoplifting, a misdemeanor offense, but denied the minor's request that his DNA be expunged from the Department of Justice database. (*Id.* at pp. 1226-1227.) The Court of Appeal reversed, finding the circumstances to fall within the language of section 299, subdivision (a), requiring expungement of DNA material from the database if the "person 'has no past or present offense or pending charge which qualifies that person for

inclusion. . . .' " (*Alejandro N.*, at p. 1228, italics omitted.)[8] In so doing, the court observed that section 1170.18 "extends [Proposition 47] reclassification in retroactive fashion to qualified offenders who incurred their convictions before [Proposition 47's] effective date," (*Alejandro N.*, at p. 1224) and that the voters intended to extend the benefits of Proposition 47 "on a broad retroactive basis to persons convicted of felonies before [its] effective date" (*id.* at p. 1228), "unless there [was] another basis to retain it apart from his mere commission of the reclassified misdemeanor offense." (*Id*. at p. 1217).

In *Alejandro N.*, the court also noted, "Section 1170.18 does not address matters *collateral* to the substantive offenses that are incorporated into juvenile proceedings under Welfare and Institutions Code section 602, but rather involves the very definition of the offenses themselves—i.e., permitting their characterization as misdemeanors rather than felonies and allowing resentencing in accordance with the misdemeanor classification." (*Alejandro N.*, *supra*, 238 Cal.App.4th at p. 1224; italics omitted & added.) Such collateral matters included, for example, applicable enhancements or

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[8] Two months after *Alejandro N.*, *supra*, 238 Cal.App.4th 1209 was decided, Bill No. 1492 was signed into law with an effective date of January 1, 2016. (Stats. 2015, ch. 487; *In re J.C.* (2016) 246 Cal.App.4th 1462, 1471.) As relevant here, the bill amended section 299, subdivision (f) "by inserting '1170.18' into the list of statutes that do not authorize a judge to relieve a person of the duty to provide a DNA sample." (*In re J.C.*, at p. 1472.) Thus, section 299, subdivision (f), now provides, "Notwithstanding any other law, including Sections 17, 1170.18, 1203.4, and 1203.4a, a judge is not authorized to relieve a person of the separate administrative duty to provide [a DNA sample] . . . if a person has been found guilty or was adjudicated a ward of the court by a trier of fact of a qualifying offense . . . ."

registration requirements. (*Id*. at pp. 1220-1224.) However, unlike the present case, *Alejandro N.* did not involve a recidivism enhancement. Instead, like the firearms exception, it involved a separate collateral consequence of a felony conviction, DNA collection, unrelated to sentencing.

Nothing in the language of section 1170.18 or the ballot materials reflects an intent to apply subdivision (k) retroactively where the judgment is final. (*Rivera*, *supra*, 233 Cal.App.4th at p. 1100.) Proposition 47's remedial provisions apply only to cases in which a defendant is currently serving a sentence for a felony conviction that is now a misdemeanor (§ 1170.18, subd. (a)) and cases in which a defendant convicted of such a crime has already completed his or her sentence (§ 1170.18, subd. (f)). Moreover, the statute goes on to instruct that "[n]othing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this act." (§ 1170.18, subd. (n).) Defendant's section 667.5, subdivision (b) prior prison term enhancements are part of such a final judgment.

As we held in *People v. Jones*, *supra*, 1 Cal.App.5th at page 230, "section 1170.18, subdivisions (a), (b), (f), and (g) explicitly allow offenders to request and courts to grant retroactive designation of offenses such as [defendant's] prison prior, but no provision allows offenders to request or courts to order retroactively striking or otherwise altering an enhancement based on such a redesignated prior offense." We find no reason to depart from our prior holding.

D. *Equal Protection*

Defendant contends his two prior prison term enhancements should be stricken retroactively under the equal protection clause of the state and federal Constitutions. Defendant argues there is no rational reason why the same offense reduced under Proposition 47 would support a section 667.5, subdivision (b) enhancement for a defendant prospectively, but not retroactively.

The United States and California Constitutions guarantee equal protection of the laws. (U.S. Const., 14th Amend., § 1; Cal. Const., art. I, § 7; see *In re Evans* (1996) 49 Cal.App.4th 1263, 1270 [the scope and effect of the two equal protection clauses is the same].) This guarantee assures that the Legislature and voters cannot adopt a classification that affects two or more similarly situated groups unequally, unless the classification has a rational relationship to a legitimate state purpose. (*Brown*, *supra*, 54 Cal.4th at p. 328; *People v. Singh* (2011) 198 Cal.App.4th 364, 369 (*Singh*).) This assumes that, as in the instant case, the classification does not involve a suspect class or a fundamental right. (*Singh*, at p. 369.)

Defendant argues that refusing to apply Proposition 47 retroactively to enhancements creates two classes of defendants: (1) those sentenced after enactment of Proposition 47, who are able to avoid enhancements based on prior felony or wobbler convictions (because the redesignations they obtain on those prior convictions apply prospectively) and (2) those sentenced before enactment of Proposition 47, who are unable to avoid enhancements based on prior felony or wobbler convictions (because the

redesignations they obtain on those prior convictions do not apply retroactively). These two classes of defendants are distinguished by whether they were able to seek redesignation before or after the current sentence was imposed, which is a function of the date Proposition 47 took effect.

It is well settled that " '[a] reduction of sentences only prospectively from the date a new sentencing statute takes effect is not a denial of equal protection.' " (*People v. Floyd* (2003) 31 Cal.4th 179, 189 (*Floyd*).) " '[A] statute ameliorating punishment for particular offenses may be made prospective only without offending equal protection, because the Legislature will be supposed to have acted in order to optimize the deterrent effect of criminal penalties by deflecting any assumption by offenders that future acts of lenity will necessarily benefit them.' " (*People v. Smith* (2015) 234 Cal.App.4th 1460, 1468, quoting *People v. Kennedy* (2012) 209 Cal.App.4th 385, 398.)

There is no denial of equal protection here, because a classification defined by the effective date of an ameliorative statute rationally furthers the state's legitimate interest in assuring that penal laws will maintain their desired deterrent effect by applying punishment as originally prescribed. (*In re Kapperman* (1974) 11 Cal.3d 542, 545-546.) As noted by the United States Supreme Court, "the Fourteenth Amendment does not forbid statutes and statutory changes to have a beginning and thus to discriminate between the rights of an earlier and later time." (*Sperry & Hutchinson Co. v. Rhodes* (1911) 220 U.S. 502, 505.)

Furthermore, applying Proposition 47 only prospectively bears a rational relationship to the legitimate state interest of transitioning from the prior sentencing scheme to Proposition 47's sentencing scheme. Prospective sentencing changes based on an effective date presumably recognize "legitimate . . . concerns associated with the transition from one sentencing scheme to another." (*Floyd*, *supra*, 31 Cal.4th at p. 191.)

Defendant has not established his equal protection rights were violated because defendants, who were sentenced after the effective date of Proposition 47, received more favorable treatment than those defendants, such as defendant, who were sentenced before Proposition 47.

IV

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

MILLER
Acting P. J.

SLOUGH
J.